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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,423	03/14/2001	Gene E. Nacey	2556/008	3458
23861	7590	03/02/2009		
METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			EXAMINER  PASS, NATALIE	
			ART UNIT 3686	PAPER NUMBER
			MAIL DATE 03/02/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/808,423

**Applicant(s)**

NACEY, GENE E.

**Examiner**

Natalie A. Pass

**Art Unit**

3686

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 39-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 17 November 2008. No claims have been amended. Claims 1-38 have been previously canceled. Claims 39-76 remain pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 39-40, 44-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa et al., U.S. Patent Number 6, 370, 513 in view of Cosentino et al., U.S. Patent Number 6, 290, 646 and further in view of Petot, et al. article: "An artificial intelligence system for computer-assisted menu planning," Sept. 1998, hereinafter known as Petot for substantially the same reasons given in the previous Office Action (paper number 20080711). Further reasons appear hereinbelow.

(A) Claims 39-40, 44-76 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 20080711, section 4, pages 2-10), and incorporated herein.

4. Claims 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolawa et al., U.S. Patent Number 6, 370, 513 in view of Cosentino et al., U.S. Patent Number 6, 290, 646 and Petot, et al. article: "An artificial intelligence system for computer-assisted menu planning," Sept. 1998, hereinafter known as Petot, as applied to claim 39 above, and further in view of Brown, U.S. Patent Number 6, 168, 563, for substantially the same reasons given in the previous Office Action (paper number 20080711). Further reasons appear hereinbelow..

(A) Claims 42-43 have not been amended and are rejected for the same reasons given in the previous Office Action (paper number 20080711, section 5, pages 11-12), and incorporated herein.

#### ***Response to Arguments***

5. Applicant's arguments filed 17 November 2008 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 17 November 2008.

(A) At pages 10-15 of the 17 November 2008 response Applicant argues that the limitations of claims 39-76 are not taught or suggested by the applied references. In response, all of the limitations which Applicant disputes are missing in the applied references have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the combined teachings of Kolawa, Cosentino, Petot and Brown, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the 35 USC § 103 rejections given in the previous Office Action (paper number 20080711) and in the

preceding sections of the present Office Action. In particular, Examiner notes that “shaping menu sets of said recipes for each of said established therapeutic diet types in a menu database in said system based upon said assigned food attributes” as recited in claim 39, is taught by the combined, applied references. For example Kolawa teaches determination of menu recommendations based on a “user preference vector”: “[i]n accordance with one aspect of the invention, initial setup questions are asked to the user to initialize his or her user's preference vector. The user preference vector comprises vector fields that represent the user's preferences for particular item attributes. Items are then recommended based on the user preference vector ...” (emphasis added) (Kolawa; column 3, lines 5-12); and Kolawa further teaches “[a]n item to be recommended is represented as a product vector. During the recommendation process, an item's product vector is compared against a user preference vector to determine how close the item matches the user's preferences. Item with the closest match are the recommended to the user ... [...] ... The creation of product vectors for recommending dishes includes parsing an original recipe for its ingredients. These ingredients are mapped to the chemical components making up the ingredients. The value of each chemical component is then stored into the inclusive preference fields of the product vector” (emphasis added) (Kolawa; column 3, lines 20-31). As exemplary chemical components Kolawa points to Figures 26A to 26D, a listing of vitamins, minerals, and other nutritional components of food menu items. Examiner submits that these teachings, together with Kolawa's teachings of “[i]n modifying default inclusive field values of a family's food preference vector, the computer program may inquire, for instance, the following: “Are any family members diabetic?”; “Are any family members on a low cholesterol

diet?"; "Do any family members have a heart condition?"; "Are any of the family members trying to gain weight?"; "Are any of the family members trying to lose weight? ... [...]  
...Questions may also be asked about the type of food that the family likes" (emphasis added) (Kolawa; column 9, lines 15-23) and Kolawa's teachings of "[a]n automated recommendation system [that] keeps track of the needs and preferences of the user through a user preference vector (emphasis added) (Abstract) indicate that a "user preference" in the Kolawa reference refers to attributes that are important to the user, however these attributes are important not only for the user's "likes," but also for the user's nutritional needs.

Furthermore, Examiner notes that Applicant appears to rely upon only a small subset of Examiner's applied art. Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference and not only the cited passages as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

As per Applicant's arguments in pages 10-13 of the response filed on 17 November 2008, that the Kolawa reference fails to teach limitations recited in claim 39, these arguments have been discussed earlier in this Office Action.

At pages 10-15 of the 17 November 2008 response, Applicant analyzes the applied references separately and argues each of the references individually. In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

As per Applicant's arguments in pages 13-14 of the response filed on 17 November 2008, that the Cosentino reference fails to teach making nutritional information available to said food service professionals, Examiner respectfully disagrees; Examiner interprets Cosentino's teachings of a method "of monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a weight management professional or nutritionist evaluates such physiological and wellness parameters ... [and] ... can supervise and provide nutritional guidance to remotely located individuals" (emphasis added) (Cosentino; column 2, lines 25-35) together with Cosentino's teachings of "[m]oreover, the apparatus allows the ... [...] ... professional to intervene and adapt the individuals diet ... [...] ... based on the ... [...] ... information received" (emphasis added) (Cosentino; column 2, lines 43-46) and

Cosentino's teachings of "establishing ... [...] ... communication to a medical professional caregiver, weight management professional or nutritionist" (emphasis added) (Cosentino; column 2, lines 59-62) to teach a form of making nutritional information available to food service professionals or "nutritionists" in order to allow a food service professional to "provide nutritional guidance" and adapt an individual's diet accordingly. Examiner further submits that in order for a nutritionist to "adapt" (that is to "modify" or to "adjust") the individual's diet, it is obvious that the nutritionist needs to have had made available to him/her nutritional information regarding the individual's diet, as recited in claim 39.

As per Applicants arguments on page 14 of the response filed on 17 November 2008 that the Petot reference "fails to teach providing a remote link of any kind," Examiner notes that it was not the Petot reference that was applied to teach this limitation, however Examiner also notes that the Petot system is available for use on the "World Wide Web" (Petot; page 1011, column 1, paragraph 4), which teaches a remote link, and that, in addition, the other applied references, Kolawa, Cosentino and Brown all provide for remote access.

As per Applicants arguments on page 14 of the response filed on 17 November 2008 that the Brown reference fails to teach limitations of claim 39, Examiner respectfully notes that the Brown reference was not applied in the rejection of claim 39.



***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. **Any response to this final action should be mailed to:**

Box AF  
Commissioner of Patents and Trademarks  
Washington D.C. 20231

**or faxed to:** (571) 273-8300.

For formal communications, please mark "EXPEDITED PROCEDURE".

9. For informal or draft communications, please label "PROPOSED" or "DRAFT" on the front page of the communication and do NOT sign the communication. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on 9-6:30 Monday - Thursday and alternate Fridays.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/N. A. P./  
Examiner, Art Unit 3686  
February 23, 2009

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686